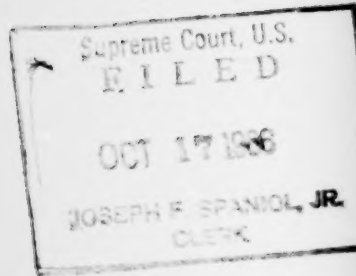


86-649①



CASE NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

STATE OF FLORIDA,

Petitioner,

vs.

WALTER DIXON,
a/k/a/
FRANK EARL RATCLIFF.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

AND APPENDIX

JIM SMITH
ATTORNEY GENERAL

ANDREA SMITH HILLYER
ASSISTANT ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-1050
(904) 488-0600
COUNSEL FOR PETITIONER

56PP

QUESTION PRESENTED FOR REVIEW

WHETHER, IN A HABEAS CORPUS PROCEEDING CONTESTING EXTRADITION IN THE ASYLUM STATE, THE COURT MAY DENY EXTRADITION ON THE BASIS THE EXTRADITION DOCUMENT FAILS TO SPECIFY THAT THE FUGITIVE LEFT THE DEMANDING STATE INVOLUNTARILY.

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10. $\frac{1}{2} \times \frac{1}{2} = \frac{1}{4}$

11. $\frac{1}{3} \times \frac{1}{3} = \frac{1}{9}$

12. $\frac{1}{4} \times \frac{1}{4} = \frac{1}{16}$

13. $\frac{1}{5} \times \frac{1}{5} = \frac{1}{25}$

14. $\frac{1}{6} \times \frac{1}{6} = \frac{1}{36}$

15. $\frac{1}{7} \times \frac{1}{7} = \frac{1}{49}$

16. $\frac{1}{8} \times \frac{1}{8} = \frac{1}{64}$

17. $\frac{1}{9} \times \frac{1}{9} = \frac{1}{81}$

18. $\frac{1}{10} \times \frac{1}{10} = \frac{1}{100}$

19. $\frac{1}{11} \times \frac{1}{11} = \frac{1}{121}$

20. $\frac{1}{12} \times \frac{1}{12} = \frac{1}{144}$

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THE HISTORY OF THE

REIGN OF

CHARLES THE FIRST

BY JOHN BURNET

IN TWO VOLUMES

LONDON

Printed by J. Sturges, at the Angel in St. Dunstons Church-yard, 1704.

THE SECOND VOLUME

OF THE HISTORY

OF THE

PREFACE

The Petitioner, the State of Florida, was the petitioner in the Supreme Court of Florida and the appellee in the District Court of Appeal, Second District of Florida. The Respondent, Walter Dixon a/k/a Frank Earl Ratcliff, was the respondent in the Florida Supreme Court and the appellant in the District Court of Appeal, Second District of Florida. In this petition, the parties will be referred to as they appear before this Court.

The following reference is made in this brief:

(A) For the portions of the record below, sufficient to show jurisdiction

in this Court, which are contained in the Petitioner's appendix and consist of pages A 1-19.

OPINIONS BELOW

The Order of the Florida Supreme Court rendered July 21, 1986, declining to accept jurisdiction for discretionary review, is not reported but is reproduced in Petitioner's Appendix at A-18. The opinion of the District Court of Appeal, Second District of Florida, rendered April 30, 1986, reported at 487 So.2d 1195, is reproduced at A-8. The Order of the State trial court denying the petition for writ of habeas corpus, rendered December 26, 1985, is not reported, but is reproduced at A-6.

GROUNDS UPON WHICH
JURISDICTION IS INVOKED

The opinion of the District Court of Appeal, Second District of Florida, was rendered April 30, 1986. The Order of the Florida Supreme Court declining to accept jurisdiction for discretionary review was rendered on July 21, 1986. The jurisdiction of this Honorable Court is invoked pursuant to the specific provisions of 28 U.S.C. § 1257(3), and Rules 17(1)(b) and (c), and Rule 20(2), Rules of the Supreme Court of the United States. This is a civil case.

FEDERAL CONSTITUTIONAL PROVISIONS
AND STATUTES INVOKED

Article IV, Section 2, Clause 2,
of the United States Constitution pro-
vides as follows:

A person charged in any state
with Treason, Felony, or other
crime, who shall flee from
justice, shall on demand of
the executive Authority of the
State from which he fled, be
delivered up, to be removed
to the State having jurisdic-
tion of the crime.

Title 18 U.S.C. § 3182 implements the
above provision, and provides as
follows:

Whenever the executive author-
ity of any State or Territory
demands any person as a fugi-
tive from justice, of the
executive authority of any
State, District or Territory
to which such person has fled,
and produces a copy of an
indictment found or an affi-
davit made before a magistrate

of any State or Territory charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive Authority making the demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

Florida's adoption of the Uniform Criminal Extradition Act (Section 941.01 - 941.29, Fla. Stat. (1941)) includes the following provisions:

§ 941.02 FUGITIVES FROM JUSTICE;
DUTY OF GOVERNOR

Subject to the provisions of this chapter, the provisions of the United States controlling, and any and all Acts of Congress enacted in pursuance thereof, it is the duty of the Governor of this state to have arrested and delivered up to the executive authority of any other

state of the United States any person charged in that state with treason, felony, or other crime, who has fled from justice and is found in this state.

§ 941.05 Extradition of Persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion

- 1) When it is desired to have returned to this state a person charged in this state with a crime, and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this State may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such state, upon condition that such person be returned to such other state at the expense of this state as the prosecution in this state is terminated.
- 2) The Governor of this state may also surrender on demand of the executive authority of any other state any person who is charged in the manner provided in § 941.23 with having violated the laws of the state whose executive authority is

making the demand, even though such person left the demanding state involuntarily.¹

¹This provision is found in § 5 of the Uniform Criminal Extradition Act.

STATEMENT OF THE CASE


On March 28, 1985, the Governor of Mississippi issued a Requisition Warrant demanding the extradition of Respondent from Florida. The Requisition Warrant or Demand sought the rendition of Respondent as a fugitive from justice charged with the crime of burglary in Mississippi. (A-1). The Governor of Florida issued his Rendition Warrant on April 24, 1985. (A-3).

Respondent filed a petition for writ of habeas corpus in the state trial court on December 6, 1985. At the hearing on the writ, Respondent admitted that he was the person named in the extradition warrant and admitted that he was physically present in Mississippi at the time of the offense. Respondent

contended he was not a fugitive from justice and thus the rendition warrant was defective. Respondent had previously been extradited from Mississippi to Florida in 1984 as an escapee from Florida; Respondent was serving a 25-year sentence in Florida for robbery and possession of a firearm at the time of his escape in early 1984. Respondent argued he could not be a fugitive from justice within the meaning of extradition law since he left Mississippi involuntarily or under legal compulsion. Respondent also argued he was not subject to extradition because Mississippi had waived jurisdiction over him by honoring the 1984 extradition demand made by Florida while the burglary charge was pending in Mississippi.

After a hearing on the writ

the state trial court denied Respondent's petition. (A-6). On appeal in the District Court of Appeal, Second District of Florida, Respondent argued 1) he was not a fugitive from justice and thus the Governor of Florida erred in granting extradition under § 941.05 (2) Fla. Stat. which Respondent argued requires the exercise of discretion by the Governor, and 2) Mississippi waived jurisdiction over him by virtue of the earlier rendition. Petitioner contended Respondent's claims were without merit and not subject to review under Michigan v. Doran, 439 U.S. 282 (1979), and that Respondent remains a fugitive from justice within the meaning of the Extradition Clause and implementing legislation. Petitioner also argued that Mississippi had not waived any



right to seek the return of Respondent.

On April 30, 1986, the Second District Court of Appeal entered its opinion. (A-8). The District Court rejected Respondent's waiver of jurisdiction argument but found merit in Respondent's argument that the Requisition Warrant was defective for characterizing Respondent as a fugitive from justice. (A-8). The District Court relied upon two cases from New York State courts which Petitioner contends represents the minority rule.

Petitioner sought discretionary review of the District Court opinion in the Florida Supreme Court on May 9, 1986.² On July 21, 1986, the Florida

²Petitioner sought discretionary review in the Florida Supreme Court on the basis that the District Court's opinion expressly affected a class of

Supreme Court declined to accept jurisdiction, and refused to entertain any motion for rehearing. (A-18).

constitutional or state officers, to-wit: the governors of Florida. Petitioner was foreclosed from seeking review on any other grounds as there was no other basis for invoking the discretionary jurisdiction of that court. The appellate jurisdiction of the Florida Supreme Court is limited to capital cases and decisions of district courts which declare invalid a state statute or a provision of the state constitution. Article V, § (3)(b)(1), Constitution of the State of Florida. The discretionary jurisdiction of the Florida Supreme Court is limited to those district court decisions which a) expressly declare valid a state statute; b) expressly construe a provision of the state or federal constitution; c) expressly affect a class of constitutional or state officers; d) expressly and directly conflict with a decision of another district court or the Florida Supreme Court on the same question of law; e) pass upon a question certified to be of great public importance, and f) are certified to be in direct conflict with decisions of other district courts of appeal. Id., Rule 9.030(a)(2)(A) Florida Rules of Appellate Procedure.

REASONS FOR GRANTING THE WRIT

As will be demonstrated in this petition, the issue involved presents an important question of federal law which should be definitively settled by this Court, and which impacts upon the interstate extradition procedures utilized by the forty-nine other states, and territories. The District Court's decision, and the State Supreme Court's refusal to review that decision, has resulted in decisional law in conflict with the federal constitutional and statutory provisions governing interstate rendition as to the definition of a fugitive from justice. The decision is also in conflict with early decisions of this Court and with decisions of courts of other states.

A person is a fugitive from justice if he commits a crime in one state and is thereafter found in another state.

Appleyard v. Massachusetts, 203 U.S.

222,229, 27 S.Ct. 122,124, 51 L.Ed.

161 (1906). As stated by this Court in

Appleyard, supra:

A person charged by indictment or by affidavit before a magistrate with the commission within a State of a crime covered by its laws, and who, after the date of the commission of such crime, leaves the state,--no matter for what purpose or with what motive, nor under what belief,--becomes, from the time of such leaving, and within the meaning of the Constitution and the laws of the United States, a fugitive from justice, . . .

203 U.S. at 227. Also see Biddinger v.

Commissioner of Police, 245 U.S. 128,

38 S.Ct. 42, 62 L.Ed. 193 (1917). All

that is necessary to convert a criminal

under the laws of a state into a fugitive from justice is that he should have left the state after having incurred guilt there. Strassheim v. Daily, 221 U.S. 280,285, 31 S.Ct. 558, 55 L.Ed. 735 (1911), Roberts v. Reilly, 116 U.S. 80, 6 S.Ct. 291, 29 L.Ed. 544 (1885). For purposes of extradition between the states it does not matter what motive induced the departure, Drew v. Thaw, 235 U.S. 432,439, 35 S.Ct. 137, 59L.Ed. 302 (1914); all that matters is that the accused was a party to the crime in the state and afterwards left that state. Roberts v. Reilly, supra. The accused is none the less a fugitive from justice within the meaning of the Constitution and laws of the United States because he left the demanding state with the knowledge of, or without

objection by, the demanding state authorities. Bassing v. Cady, 208 U.S. 386, 28 S.Ct. 392, 52 L.Ed. 540 (1908).

This Court has thus defined a fugitive from justice as one who commits a crime in one state and is thereafter found in another state. The determination of fugitive status is not dependent upon the fugitive's means of leaving the state. Pursuant to this Court's opinions, a majority of courts have consistently ruled that whether the fugitive left the state voluntarily or involuntarily is completely immaterial and irrelevant to whether or not he is subject to extradition as a fugitive from justice. See Brewer v. Goff, 138 F.2d 710 (10th Cir. 1943); Woody v. State, 524 P.2d 1150 (Kan. 1974); Evans v. Rosenberger, 181 N.W.2d 152 (Iowa

1970); Commonwealth v. Haas, 236 A.2d 810 (Penn. 1968); Hedge v. Campbell, 389 P.2d 834 (Kan. 1964); Parsons v. Grimes, 138 S.E.2d 306 (Ga. 1964); Hanford v. Grimes, 132 S.E.2d 585 (Del. 1960) cert. den., 364 U.S. 841; Scheinfain v. Aldredge, 12 S.E.2d 868 (Ga. 1941); State ex rel O'Connor v. Williams, 290 N.W.2d 533 (Wisc. App. 1980); Ex Parte Christmas, 453 S.W.2d 146 (Tex.Crim.App. 1970); Ex Parte Smith, 410 S.W.2d 638 (Tex.Crim.App. 1967); State v. West, 191 A.2d 758 (N.J.Sup.Ct. 1963); Application of Butler, 346 P.2d 348 (Okla.Crim.App. 1959), cert. den., 363 U.S. 846; Ex Parte Guinn, 284 S.W.2d 721 (Tex.Crim.App. 1955); Commonwealth v. Burke, 89 A.2s 899 (Pa.Super.Ct. 1952), cert. den., 345 U.S. 919; In Re Rowe, 423

N.E.2d 167 (Ohio 1981) and cases cited therein. The fact that Respondent left Mississippi with the knowledge and consent of Mississippi state officials does not preclude Respondent from being subject to extradition as a fugitive from justice. Chamberlain v. Celeste, 729 F.2d 1071 (6th Cir. 1984).

Whatever the scope of discretion vested in the governor of an asylum state, the courts of an asylum state are bound by Article IV § 2, United States Constitution, 18 U.S.C. § 3182, and, where adopted, the Uniform Criminal Extradition Act. Michigan v. Doran, 439 U.S. 282, 99 S.Ct. 530, 58 L.Ed.2d 521 (1978). A governor's grant of extradition is prima facie evidence that the constitutional and statutory requirements have been met. Id. Once the

governor has granted extradition, a court considering release on habeas corpus can do no more than decide a) whether the extradition documents on their face are in order; b) whether the person has been charged with a crime in the demanding state; c) whether the person in custody is the person named in the request for extradition; and d) whether the person is a fugitive.³ Id.

³The question of fugitivity is a question of fact which the governor of the asylum state must decide. This determination of fact by the executive of the asylum state in issuing his warrant of arrest, upon a demand made upon that ground, whether the writ contains a recital of an express finding to that effect or not, must be regarded as sufficient to justify the remand until the presumption in its favor is overthrown by contrary proof. Roberts v. Reilly, 116 U.S. 80, 85 (1885).

The Second District Court of Appeal in Florida apparently found the Florida Governor's Warrant defective on its face because the Requisition Warrant and supporting documents did not show that the Governor of Florida, in issuing the warrant based upon the demand from Mississippi, was aware that Respondent had previously been extradited from Mississippi to Florida. Since the Governor of Florida had previously demanded the extradition of Respondent, the Governor of Florida was obviously aware of the circumstances under which Respondent arrived in Florida from Mississippi. The Second District Court of Appeal in Florida has erroneously confused the mechanical procedures of extradition by requiring the Governor of Florida to state the obvious in his

Governor's Warrant, to-wit: that he had previously demanded the extradition of Respondent from Mississippi and is aware of that fact in issuing the present rendition warrant. The Second District Court of Appeal relied upon two New York cases representing the minority and less-favored view. The Second District Court of Appeal dwelled upon the mistaken impression that Respondent was not a fugitive from justice within the meaning of the Constitution and laws governing extradition. This Court's definitions of fugitive of justice (supra) takes supreme precedence over the "minority rule" espoused in the New York cases cited by the Second District Court of Appeal in Florida.

The decision below requires more of the demanding state and asylum state governors than is required under the Constitution and laws governing extradition. The decision below requires the governors to state in their documents that the fugitive left the state involuntarily; there is no such requirement in Art. IV § 2, 18 U.S.C. § 3182 or the Uniform Act. Section 5 of the Uniform Act successfully resolved any conflict over whether individuals who left states involuntarily were fugitives from justice. Under § 5, only two elements are required to make a person a fugitive: first, the person to be extradited must be sought by a state in which he is accused of having committed an offense; and second, the person must be located in a state other than the demanding

state.

The sole purpose of the statutes and constitutional provision was to secure the return of persons who had committed crime within one state and had left that state before answering the demands of justice. The important fact is not their purpose in leaving the state, but the fact that they had left the state and hence were beyond the reach of the process of the state where the crime was committed. The simple fact that they are not within the state to answer its criminal process when required renders them, in legal intendment, fugitives from justice regardless of their purpose in leaving. The manifest purpose of the constitutional provision and statutes is to effect the return of absentee criminals or those charged

with crime; such provisions should receive a liberal construction to carry out that manifest purpose, as extradition is a right belonging to the demanding state.

CONCLUSION

This Court should accept jurisdiction of this case and clarify the true intent surrounding Article IV, § 2. Although this particular case is easily resolved by the issuance of a new governor's warrant with added words concerning the prior extradition,⁴ the written opinion of the Second District Court of Appeal is published and is the only opinion in Florida on this issue. As such, the effect is disastrous as now, in order to prevent unwarranted delays in extradition by virtue of protracted court proceedings, the

⁴At the time of filing this petition, Mississippi has again demanded the extradition of Respondent. The actual extradition of Respondent to Mississippi does not render this petition moot because the issue presented is capable of repetition yet avoiding review.


Governor of Florida must specifically indicate his awareness of the fact that the fugitive left the demanding state involuntarily, if not evident from the demanding state's documents. This is not required by the Constitution, in fact, the definition of a fugitive from justice does not concern whether the fugitive left the demanding state voluntarily or involuntarily.

This Court should accept jurisdiction and help alleviate the judicially created delays plaguing the interstate extradition process across the nation. Expeditious extradition is essential to the efficient administration of criminal justice nationwide. On the basis of the facts and law presented above,

Petitioner submits that the instant
Petition for Writ of Certiorari be
granted.

Respectfully submitted:

JIM SMITH
ATTORNEY GENERAL


ANDREA SMITH HILLYER
ASSISTANT ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA
32399-1050

(904) 488-0600

COUNSEL FOR PETITIONER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing was forwarded by U.S. Mail to Douglas A. Wallace, Esquire, Post Office Box 9032, Bradenton, Florida, 33506, on this 17th day of October, 1986.

Andrea Smith Hillyer
ANDREA SMITH HILLYER
ASSISTANT ATTORNEY GENERAL
COUNSEL FOR PETITIONER



APPENDIX

Requisition Warrant issued by the Governor of Mississippi on March 28, 1985.	A-1
Rendition Warrant issued by the Governor of Florida on April 24, 1985.	A-3
Order of the Circuit Court of the Twelfth Judicial Circuit in and for Manatee County, Florida, denying Respondent's petition for writ of habeas corpus, dated December 26, 1985.	A-6
Opinion of the District Court of Appeal, Second District of Florida, dated April 30, 1986.	A-8
Order of the Florida Supreme Court declining to accept jurisdiction for discretionary review, dated July 21, 1986.	A-18



A-1

Executive Office

State of Mississippi

Jackson

WILLIAM A. ALLAIN, Governor of Said
State To His Excellency the Governor of
the State of

F L O R I D A

Whereas, It appears by the annexed
copy of an INDICTMENT, CAPIAS, AND
RELATED DOCUMENTS which is hereby
certified to be authentic, that FRANK
EARL RATCLIFF, aka WALTER DIXON, aka
FRANK DIXON stands charged with the
crime of BURGLARY--HABITUAL CRIMINAL
committed in the County of FORREST in
this State, and it has been represented
to me that HE has fled from the
justice of this State and has taken
refuge in the State of FLORIDA.

Now, Therefore, pursuant to the
provisions of the constitution and Laws
of the United States in such case made
and provided, I do hereby request that
the said FRANK EARL RATCLIFF, aka
WALTER DIXON, aka FRANK DIXON be
apprehended and deliver to GENE WALTERS
&/OR AGENT[S] who is hereby authorized
to receive and convey HIM to the
State of Mississippi, there to be dealt
with according to law.

This State will not be responsible for any expense attending the execution of this requisition for the arrest and delivery of fugitive from justice.

Given Under My Hand, and the Great Seal of the State affixed, at the City of Jackson, this 28th day of MARCH A.D. one thousand nine hundred EIGHTY-FIVE , and of the Independence of the United State of America the two hundred and NINTH.

Governor

By the Governor:

Secretary of State

THE STATE OF FLORIDA

To all and singular the Sheriffs and all Peace Officers of the Several Counties of this State to Whom This May Come, Greetings:

WHEREAS, The Executive authority of the State of Mississippi has demanded of the Executive authority of the State of Florida the delivery and surrender of the body of Frank Earl Ratcliff aka Walter Dixon aka Frank Dixon as a fugitive from justice from said State of Mississippi to said State of Florida, and has produced and filed with the Executive authority of said State of Florida to which said State Frank Earl Ratcliff aka Walter Dixon aka Frank Dixon has fled from the State of Mississippi a copy of Demand, & Indictment, together with and Executive Agreement

charging the said person so demanded with having committed in said State of Mississippi the crime of (charged with) Burglary--Habitual Criminal and which is certified as authentic by the Executive of said State of Mississippi

NOW, THEREFORE, This is to command you to apprehend and arrest the body of the said Frank Earl Ratcliff aka Walter Dixon aka Frank Dixon and deliver his said body to Sheriff Gene Walters, &/or Agent(s) agent of the said State of Mississippi, duly authorized and empowered to receive and convey the said Frank Earl Ratcliff aka Walter Dixon aka Frank Dixon to the State of Mississippi, then and there to be surrendered to the legal authorities of said State, to be dealt with according to law;

A-5

PROVIDED, NEVERTHELESS, AND IT IS
EXPRESSLY UNDERSTOOD, That all fees,
expenses or charges in the execution of
this order be paid by the said State of
Mississippi

Hereof fail not at your peril.

IN WITNESS WHEREOF, I have
hereunto signed my name, and caused to
be affixed the Great Seal of State, at
Tallahassee, Florida, this 24th day
of April A.D., 1985.

Governor

By the Governor:

Secretary of State

IN THE CIRCUIT COURT OF THE TWELFTH
JUDICIAL CIRCUIT IN AND FOR MANATEE
COUNTY

IN THE MATTER OF THE)	
EXTRADITION OF WALTER)	CASE NO.: CA-
DIXON, a/k/a FRANK)	85-3168
EARL RATCLIFF,)	

ORDER

This cause coming on for hearing on a Petition for Writ of Habeas Corpus and the Court, after consideration thereof, finds that although the Petitioner is not technically a "fugitive from justice," having been brought to this State involuntarily through extradition, without an agreement to return, F.S. 941.05, Laws of Florida, provides for surrender on demand even though such person left the demanding state involuntarily, it is therefore,

ORDERED that the Petition for Writ of Habeas Corpus is hereby denied.

DONE AND ORDERED in Chambers at

A-7

Bradenton, Manatee County, Florida, this
26th day of December, 1985.

Thomas M. Gallen,
Circuit Judge

Copies furnished to:

Office of State Attorney

Henry E. Lee, Esq.

Walter Dixon, a/k/a Frnak [sic] Earl
Ratcliff

Douglas A. Wallace, Esq.

NOT FINAL UNTIL TIME EXPIRES TO FILE
REHEARING MOTION AND, IF FILED,
DETERMINED.

IN THE DISTRICT COURT OF
APPEAL
OF FLORIDA
SECOND DISTRICT

IN THE MATTER OF THE)
EXTRADITION OF WALTER) CASE NO. 86-121
DIXON, a/k/a FRANK)
EARL RATCLIFF)
_____)

Opinion filed April 30, 1986.

Appeal from the Circuit
Court of Manatee County;
Thomas A. Gallen, Judge.

Douglas A. Wallace,
Special Public Defender,
Bradenton, for Appellant.

Jim Smith, Attorney General,
and Andrea Smith Hillyer,
Assistant Attorney General,
Tallahassee, for Appellee
State of Florida.

PER CURIAM

Walter Dixon, also known as Frank
Ratcliff, appeals the denial of his

petition for writ of habeas corpus.

We reverse.

The facts surrounding Dixon's present confinement are not in dispute. While serving a twenty-five year sentence in Manatee County, Dixon escaped, eventually making his way to Mississippi. There he was arrested and indicted for burglary. Prior to trial on that charge, Dixon was extradited back to Florida to face the escape charge. For reasons unrelated to this appeal the twenty-five year sentence was vacated, and Dixon entered a negotiated plea to the escape charge. Then he was served with a warrant from Mississippi requesting his return to face the burglary charge. It is this warrant that Dixon unsuccessfully

challenged by petitioning for habeas corpus. Pursuant to a stay order he remains detained in Florida pending this trial.

First, Dixon argues that Mississippi effectively waived its right to reacquire jurisdiction over him when it permitted his return to Florida prior to the conclusion of its case against him. We are not persuaded by the authorities he cites, principally Anderson v. State, 386 P.2d 320 (Okla. Crim.App. 344, 167 P. 404 (1917)), which has since been described as "clearly contrary to the weight of authority." In re Fedder, 143 Cal.App. 2d 103, 111, 299 P.2d 881, 886 (1957). Anderson confuses the traditional definition of a "fugitive" as one who has consciously fled from justice with the

broader concept of a fugitive as set forth in the Uniform Criminal Extradition Act.

The Uniform Criminal Extradition Act, which Florida has adopted as sections 941.01 through 941.30, Florida Statutes (1985), provides for the apprehension and return both of traditional "fugitives" and persons who, like Dixon, were transported to the asylum state involuntarily, including through extradition. See generally, 11 West's Uniform Laws Annotated 53. For example, if another state requests the extradition of a prisoner facing charges in Florida, this state may relinquish the prisoner forthwith or wait until the pending charges have been resolved. § 941.19, Fla.Stat. (1985). Surrender of the prisoner

does not amount to a waiver of Florida's right to exercise jurisdiction over him in the future. § 941.27, Fla.Stat. (1985). No express reservation of the right to resume jurisdiction is necessary under the Uniform Act. See, e.g., Johnson v. Peterson, 1 Wash.App. 856, 466 P.2d 183 (1970). Accordingly, we reject this theory of waiver, as have other jurisdictions. See, e.g., Golla v. State, 52 Del. 433, 159 A.2d 585, cert. den., 364 U.S. 481, 81 S.Ct. 78, 5 L.Ed.2d 64 (1960); Davis v. Rhyne, 181 Kan. 443, 312 P.2d 626 (1957); Crady v. Cranfill, 371 S.W.2d 640 (Ky. 1963); State ex rel Gegenfurtner v. Granquist, 271 Minn. 207, 135 N.W.2d 447 (1965); Rau v. McCorkle, 45 N.J.Super. 191, 131 A.2d

895, affirmed, 47 N.J.Super. 36, 135 A.2d 224 (1957); Dodson v. State, 497 S.W.2d 757 (Tenn. 1973); Ex parte Christmas, 453 S.W.2d 146 (Tex.Crim. App. 1970).

We do find, however, that Dixon's second argument has merit. He contends that the Mississippi warrant is fatally defective because it characterizes him as a "fugitive from justice." The governor of an asylum state operating under the Uniform Act has a mandatory duty to extradite persons who have "fled from justice" voluntarily, provided the formal requisites of the demanding state's warrant are met. §§ 941.02, 941.03, Fla.Stat. (1985). In such cases, the only issues the prisoner may contest are whether he is the person named in the warrant and

whether there is sufficient evidence to show he was in the demanding state at the time of the offense. See, e.g., State v. Cox, 306 So.2d 156 (Fla. 2d DCA 1074). Neither of these defenses has been raised by Dixon. On the other hand, section 941.05(2), Florida Statutes (1985), provides that the governor may order the arrest and transport of persons who have left the demanding state involuntarily. Dixon argues that he falls into this second category, and thus that it is within the governor's discretion to refuse to extradite him.

There do not appear to be any Florida cases construing this particular provision. Dixon cites People ex rel Brunner v. Dominy, 22 Misc.2d 683, 191 N.Y.S. 46 (1959), wherein the petitioner

had been extradited under compulsion from Florida to New York. When Florida demanded his return, its warrant similarly described him as a "fugitive," and the New York governor necessarily treated the request as mandatory. The appellate court held that the Florida warrant was invalid because it deprived the petitioner of the governor's exercise of discretion. See also, People ex rel. Bernheim v. Warden of the House of Detention for Men, 95 Misc.2d 577, 408 N.Y.S. 2d 285,286 (1978), construing a similar statutory provision, wherein the court stated "that the Governor may well have decided to extradite the defendant anyway, does not justify circumventing the Governor's discretionary judgment."

It is immaterial that Mississippi

has not adopted the Uniform Act. See 11 U.L.A. (Supp. 1986) at 22. The laws of the asylum state apply, and must be satisfied. State v. Liakis, 165 Neb. 503, 86 N.W.2d 373 (1957). While it is true that the governor's actions may be cloaked to some degree with a presumption of correctness, the findings inherent in the issuance of a governor's warrant are not final and conclusive but may be rebutted by evidence to the contrary. Ex parte Rubens, 73 Ariz. 101, 238 P.2d 402, cert. den., 344 U.S. 840, 73 S.Ct. 50, 97 L.Ed.2d 653 (1952). Dixon has presented unrefuted evidence that he is not a "fugitive" in the traditional sense. On the other hand, we find nothing in the documents supporting Mississippi's request for extradition to indicate that our governor, faced with

Mississippi's request for Dixon's return, was apprised of the fact that Dixon had not voluntarily absented himself from Mississippi. Thus, we cannot presume that the governor's decision to honor Mississippi's request was simply an exercise of his discretion. Cf., People ex rel. Brunner v. Dominy.

Accordingly, the order denying Dixon's petition for writ of habeas corpus is reversed with directions that Dixon be discharged without prejudice to any other proceedings the demanding state may be advised to take. People ex rel. Bernheim v. Warden of the House of Detention for Men.

GRIMES, A.C.J. and FRANK and SANDERLIN, JJ., Concur.

Supreme Court of Florida

MONDAY, JULY 21, 1986

STATE OF FLORIDA,

Petitioner,

vs.

WALTER DIXON, Etc.

Respondent.

CASE NO. 68,758

District Court
of Appeal,
2nd District--
96-121

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla.R. App.P. 9.330(d).

McDonald, C.J., OVERTON, EHRLICH, SHAW
and BARKETT, J.J., Concur

A True Copy

BDM

TEST:

Sid J. White
Clerk Supreme
Court.

C: Hon. William A.
Haddad, Clerk
Hon. Thomas M.
Gallen, Judge
Hon. Richard B.
Shore, III, Clerk

Andrea Smith
Hillyer, Esquire
Douglas A. Wallace
Esquire



2
CASE NO. 86-649

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

STATE OF FLORIDA,

Cross-Respondent,

vs.

WALTER DIXON,
a/k/a
FRANK EARL RATCLIFF.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION

JIM SMITH
ATTORNEY GENERAL

ANDREA SMITH HILLYER
ASSISTANT ATTORNEY GENERAL
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TALLAHASSEE, FLORIDA 32399-1050
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COUNSEL FOR PETITIONER

HPH

QUESTION PRESENTED FOR REVIEW

WHETHER A STATE WHICH
HONORS THE REQUISITION
OF ANOTHER STATE FOR A
PRISONER IN ITS CUSTODY FOR
AN OFFENSE, WITHOUT THE
PRISONER'S CONSENT AND
WITHOUT AN AGREEMENT FOR
HIS RETURN, WAIVES ITS
JURISDICTION OVER THE
PERSON OF THE PRISONER SO
THAT HE IS NOT A "FUGITIVE
FROM JUSTICE" AND THUS
CANNOT PROPERLY BE EX-
TRADITED BY THE SURRENDERING
STATE?

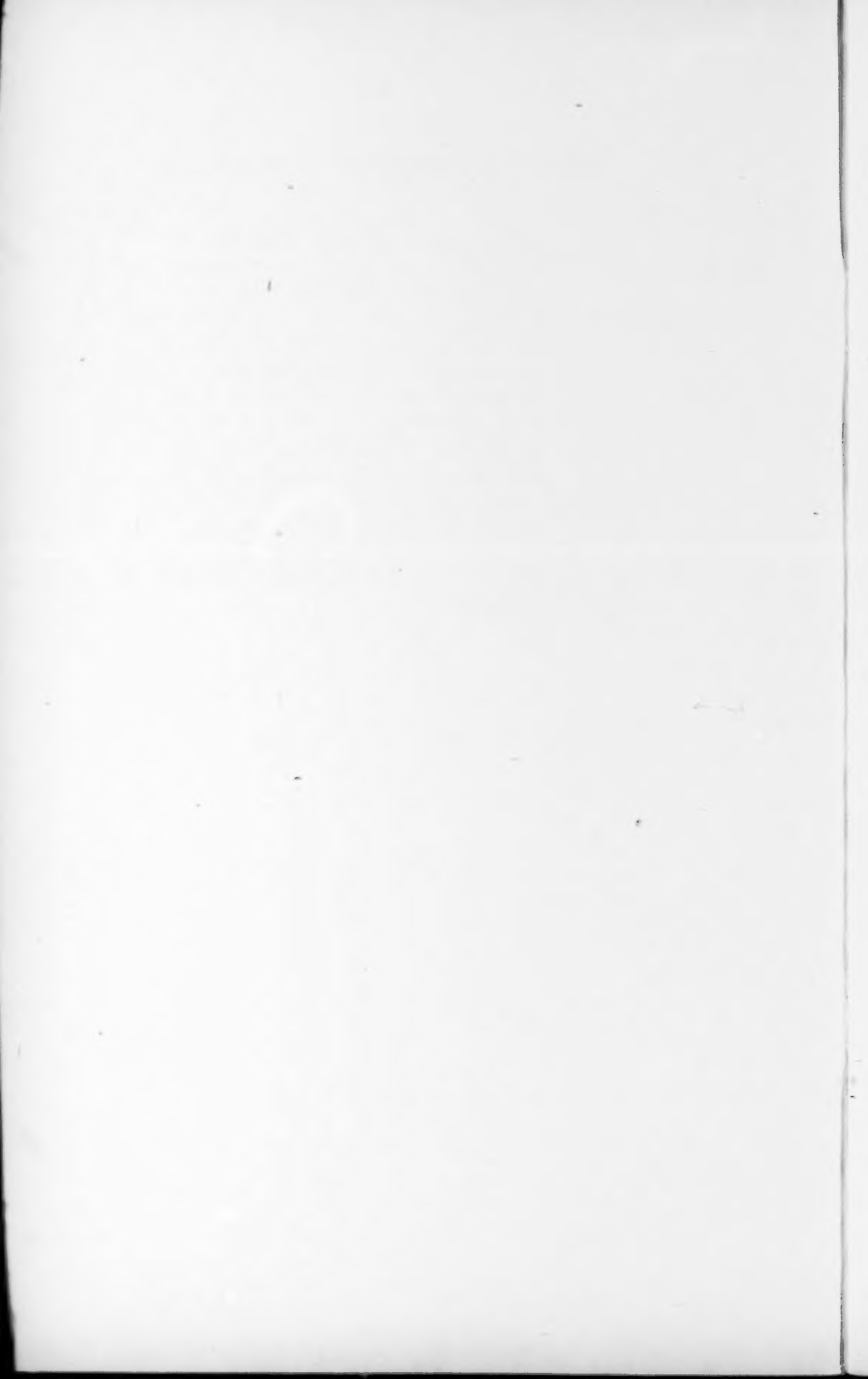


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PREFACE

Cross-Respondent, the State of Florida, is the original petitioner in the Petition for Writ of Certiorari filed on October 17, 1986 in this Court. Walter Dixon aka Frank Earl Ratcliff is the Cross-Petitioner and Respondent.

Cross-Respondent, the State of Florida, is filing the instant brief in opposition in response to Respondent-Cross-Petitioner Dixon's Cross-Petition filed on November 13, 1986.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Mississippi has not enacted the Uniform Criminal Extradition Act, and thus the federal provisions set forth in the Cross-Petition solely govern extradition proceedings in Mississippi. Florida has enacted the Uniform Criminal Extradition Act (§941.01-§941.29 Fla. Stat.). §19 of the UCEA (§941.19 Fla. Stat.) provides that

If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the Governor, in his discretion, either may surrender him on demand of the executive authenticity of another state or hold him until he has been tried or convicted and punished in this state.

§25-B of the Uniform Act, found in
§941.27 Fla. Statl, provides that

Nothing in this Chapter contained shall be deemed to constitute a waiver by this state of its right, power, or privilege to try such demanded person for crime committed within this state, or of its right, power, privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for any crime committed within this state, nor shall any proceedings had under this chapter which result in, or fail to result in, extradition be deemed a waiver by this state of any of its right, privileges, or jurisdiction in any way whatsoever.

ARGUMENT

The extradition laws of this country are designed to prevent the successful escape of all persons accused of crime and to secure their return to the state wherein they are charged. Consistent with this constitutionally mandated purpose, the majority of jurisdictions in modern times have held that a surrendering state does not automatically waive jurisdiction over the fugitive by honoring another state's demand. This majority has also consistently ruled that a waiver of jurisdiction should be found only in those cases in which the record contains affirmative evidence of intentional waiver by the state. See (in addition to the cases cited by Cross-Petitioner on pages 15

& 16 of the cross-petition) Simmons v. Leach, 626 P.2d 164 (Colo. 1981); State v. Canady, 606 P.2d 815 (Ariz. 1980); Schoengarth v. Bray, 615 P.2d 655 (Colo. 1980); State v. Knapp, 599 P.2d 855 (Ariz. 1979); In Re Roessel, 388 A.2d 835 (Vt. 1978); Gottfried v. Cronin, 55 P.2d 969 (Colo. 1976); Commonwealth v. Haas, 266 A.2d 94 (Pa. 1970); In Re Patterson, 411 P.2d 897 (Calif. 1966); Parsons v. Grimes, 138 S.E.2d 306 (Ga. 1964); Heston v. Green, 189 N.E.2d 86 (Ohio 1963) cert. den. 374 U.S. 822 (1963); State ex rel Graves v. Williams, 298 N.W.2d 392 (Wisc. App. 1980); State ex rel Hood v. Purcell, 494 P.2d 461 (Or. App. 1972); Bishop v. Cupp, 490 P.2d 524 (Or. App. 1971). Also see,

Williams v. Dept. of Corrections,
438 F.2d 78 (9th Cir. 1971); Bullock v.
State of Mississippi, 404 F.2d 75 (5th
Cir. 1968); Derengowski v. U.S. Marshal,
377 F.2d 223 (8th Cir. 1967) cert. den.
389 U.S. 884 (1967).


The duty to deliver a person
charged with an offense emanates from
Article IV §2 of the United States
Constitution, and in keeping with the
spirit of comity, waiver should never
be presumed. In Re Roessel, supra.
The bare fact of Mississippi's sur-
render of cross-petitioner upon
Florida's demand at a time when charges
against cross-petitioner were pending
in Mississippi does not operate to
waive or forfeit Mississippi's power to
later seek satisfaction of the charges

pending in Mississippi.

This Court should decline to accept review on the cross-petition. There is nothing in the federal constitutional and statutory provisions governing extradition which suggests or even hints that an asylum state waives jurisdiction to later prosecute a fugitive when such state honors a demand from another state at a time when charges are pending in the asylum state. Hence, the Uniform Criminal Extradition Act correctly provides that no such waiver is implied, in accordance with the federal law.


Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing has been forwarded by U.S. Mail to Douglas A. Wallace, Esquire, Post Office Box 9032, Bradenton, Florida, 33506, on this _____ day of December, 1986.


ANDREA SMITH HILLYER
ASSISTANT ATTORNEY GENERAL